November, 1958, to 31st August, 1964. There will, therefore, be judgment for the 1st plaintiff in the sum of $19,125 and for the 2nd plaintiff in the sum of $6,375.

I will now hear arguments as to costs.

Claim allowed.

Solicitors: *Dharmananda & Co.; N. Sharma.*

TURQUAND, YOUNG & CO. v. YAT YUEN HONG CO. LTD.

[O.C.J. (Ambrose J.) February 25, 1967]

[Singapore — Suit No. 471 of 1966]

Landlord and Tenant — Promise by tenant to surrender premises — Promise by landlord to pay valuable consideration — Whether enforceable by tenant — Premiums on Leases Ordinance (Cap. 253), s. 2(1) — When compliance with s. 2 impossible — Effect on promise or agreement — When payment of consideration lawful under s. 2(1) (Cap. 253) — When payment of consideration not contravention of Control of Rent Ordinance (Cap. 242), s. 4.

Contract — Want of mutuality.

Interpretation — Intention of legislature — Words clear and unambiguous.

The plaintiffs, tenants of rent controlled premises, agreed in writing with the landlord/defendants that they (the tenants) would vacate the premises on March 7, 1966 and in consideration thereof the landlords would pay $60,000 on March 7, 1966 before possession and $50,000 by five equal monthly instalments of $10,000. As the defendants failed to pay the $60,000 or comply with the remaining clauses of the agreement, the plaintiffs brought this action to enforce the agreement against their landlords. The defendants admitted making the agreement but raised two points of law which were set down for hearing to be disposed of before the trial of the action persuant to R.S.C., O. XXVI r. 2. The points were (i) whether the agreement was unlawful for non-compliance with section 2 of the Premiums on Leases Ordinance (Cap. 253) by reason of non-presentation forthwith to the City Council or the successors thereof; (ii) whether the agreement was unenforceable, the premises being subject to the provisions of the Control of Rent Ordinance (Cap. 242).

Held: (1) under the Premiums on Leases Ordinance (Cap. 253), to require the giving up possession of any building for valuable consideration was unlawful unless (a) the particulars of such consideration were furnished in a written document and (b) the document was forthwith presented for inspection by the person giving up possession to the City Council. The plaintiffs had not been guilty of any unlawful act under section 2(1) of the Premiums on Leases Ordinance because in the present case condition (a) above had been complied with, and condition (b) above was to be complied with by the plaintiffs only on giving up possession and as possession had not yet been given up by the plaintiffs the duty to present the document for inspection to the City Council had not arisen. Furthermore, after the Local Government Integration Ordinance, 1963 came into operation on September 1, 1963 it was impossible for the plaintiffs to comply with condition (b) as there was no statutory provision for the function of receiving and inspecting the document referred to in section 2(1) of the Premiums on Leases Ordinance to be exercised by anyone. Condition (b) must therefore be regarded as suspended until statutory provision was made for the function in question to be exercised by someone;

(2) the consideration required by the plaintiffs to be given by the defendants was not in addition to the rent. The consideration was required as a condition of the surrender of the tenancy to the landlords. The consideration was not required as a condition of the transfer of the tenancy and therefore the plaintiffs did not contravene the provisions of section 4 of the Control of Rent Ordinance.

Cases referred to:—

(1) *Sameen* v. *Abeyewickrema* [1936] A.C. 597 at p. 609.

(2) *Rajenbach* v. *Mamon* [1955] 1 Q.B. 283.

(3) *Barton* v. *Finchans* [1921] 2 K.B. 291.

CIVIL SUIT.

K. A. O'Connor for the plaintiffs.

A. P. Godwin for the defendants.

Cur. Adv. Vult.

Ambrose J.: In this action the plaintiffs claim from the defendants the sum of $60,000 alleged to be due on the 7th March, 1966, under an agreement dated the 17th February, 1966, and interest at the rate of eight per cent per annum from the date of the writ, the 22nd March, 1966, to the date of payment.

The agreement is alleged to be for the compensation of the plaintiffs by the defendants for vacating a rent controlled property known as No. 1 Bishopsgate, Singapore. It reads as follows:—

"17th February, 1966.

No. 1 Bishopsgate

Heads of agreement

1. Vacant Possession: 7th March, 1966.

2. Compensation: $110,000 payable

(a) $60,000 on 7th March 1966 before possession.

(b) $50,000 by five equal monthly instalments of $10,000 each payable on the last day of each succeeding month. 1st payment 7th April 1966.

(c) Interest payable on balance from time to time due at 8% per annum at the end of each month at same time as the above-mentioned instalments.

(d) Bankers' guarantee to be given on 7th March, 1966 guaranteeing payment of (b) and (c).

(e) Drew & Napier's legal costs to be paid by Yat Yuen Hong Co. Ltd."

The plaintiffs allege that the sum of $60,000 was due to be paid by the defendants under the agreement on the 7th March, 1966, before possession. They further allege that they are now and have at all material times been ready and willing to give up possession of the premises upon payment of the sum of $60,000 and upon compliance by the defendants with the remaining clauses of the agreement, but the defendants have failed so to pay or comply.

The defence admits the making of the agreement dated the 17th February, 1966, but raises two points of law.

On the 13th May, 1966, on an application made by the plaintiffs, it was ordered that the

two points of law raised by the defence be set down for hearing and disposed of before the trial of the action pursuant to Order XXVI, rule 2. The points of law set out in the order are these:—

1. Whether the agreement dated 17th February, 1966, is unlawful for non-compliance with section 2 of the Premiums on Leases Ordinance (Chapter 253) by reason of non-presentation forthwith to the City Council or the successors thereof;

2. Whether the agreement is unenforceable, the premises being subject to the provisions of the Control of Rent Ordinance (Chapter 242).

I will now consider the first point of law. Section 2(1) of the Premiums on Leases Ordinance provides as follows:—

"It shall be unlawful for any landlord, or agent of a landlord as a condition of the grant, renewal or continuance of any lease or agreement for the tenancy of any building or part of a building, or for any person as a condition of giving up possession of any building or part of a building, to require the giving of any consideration whatsoever whether with or without reservation of rent unless —

(a) particulars of such consideration and of such building or part of a building are furnished in a written document; and

(b) such document is forthwith presented for inspection by the landlord or his agent or any person giving up possession as aforesaid to the City Council if the said building or part of a building is situated within the limits of the City or to the Rural Board if the said building or part of a building is situated within the Rural Board area."

It is not disputed that the original and a photostat of the agreement in question were sent by the plaintiffs' solicitors to the Chief Assessor, Planning Department, City Hall, Singapore, on the 21st March, 1966.

The material parts of section 2(1) of the Premiums on Leases Ordinance read as follows:—

"It shall be unlawful . . . for any person as a condition of giving up possession of any building . . . to require the giving of any consideration whatsoever . . . unless —

(a) particulars of such consideration and of such building . . . are furnished in a written document; and

(b) such document is forthwith presented for inspection by any person giving up possession as aforesaid to the City Council . . ."

The dominant purpose in construing a statute is to ascertain the intention of the legislature as so expressed. This intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand: 36 *Halsbury's* Laws of England, 3rd edition, paragraph 578. As the words of the ordinance are clear and unambiguous, it is not open to the court to ascertain the intention of the legislature by considering how the law stood before the enactment of the ordinance and by looking at the objects and reasons set out in the original bill to discover the mischief which was intended to be suppressed. To require the giving of any consideration as a condition of giving up possession of any building is an unlawful act unless (a) particulars are furnished in a written document and (b) the document is forthwith presented for inspection by the person giving up possession to the City Council. "Forthwith" means "as soon as practicable": see *Sameen* v. *Abeyewickrema.*[1] In the present case condition (a) was complied with. As regards condition (b) it is the person giving up possession who has to present the document to the City Council as soon as practicable. In my opinion, condition (b) is to be complied with by the plaintiffs only on giving up possession. As possession has not yet been given up by the plaintiffs, the duty to present the document for inspection to the City Council has not yet arisen.

Furthermore it is impossible for the plaintiffs to comply with condition (b) as there seems to be no statutory provision for the function of receiving and inspecting the document under section 2(1) of the Premiums on Leases Ordinance to be exercised by anyone from the 1st September, 1963, when the Local Government Integration Ordinance, 1963, came into operation. This I will now endeavour to show. City Councillors were abolished by the City Council (Suspension and Transfer of Functions) Ordinance, 1959. Section 6 of this Ordinance provided for the transfer of all the functions of the City Council to the Government. As from the 1st January, 1961, rates previously leviable by the City Council and the Rural Board were replaced by a property tax upon the annual value of all immovable properties under the Property Tax Ordinance, 1960. This ordinance created the offices of Comptroller of Property Tax and Chief Assessor and provided that the Chief Assessor shall be responsible for the assessment of the annual values of properties for the purposes of the Ordinance. Section 3(2) of the Local Government Integration Ordinance, 1963, provides:—

"In any written law and in any document whatsoever, unless the context otherwise requires, any reference to a local authority or the City Council or the Rural Board or any officer thereof, shall be construed as a reference to the Government, Minister or public officer for the time being, under and by virtue of this Ordinance, discharging the functions performed by such local authority, the City Council, Rural Board or any officer thereof, as the case may be, prior to the coming into operation of this Ordinance."

The function of receiving and inspecting documents presented under section 2(1)(b) of the Premiums on Leases Ordinance passed from the City Council to the Government in 1959.

The Property Tax Ordinance, 1960, did not confer this function on the Chief Assessor. Section 185 of the Local Government Integration Ordinance, 1963, repealed the City Council (Suspension and Transfer of Functions) Ordinance, 1959. The Local Government Integration Ordinance, 1963, did not assign the function of receiving and inspecting the documents referred to in section 2(1) of the Premiums on Leases Ordinance to the Government, Minsiter or any public officer. I accordingly come to the conclusion that there seems to be no statutory provision for the function of the City Council under section 2(1) of the Premiums on Leases Ordinance to be exercised by anyone from the 1st September, 1963, when the Local Government Integration Ordinance, 1963, came into operation. It is therefore impossible to comply with condition (b) in that subsection. In my view condition (b) must therefore be regarded as suspended until statutory provision is made for the function in question to be exercised by someone.

For the reasons given above, the plaintiffs, in my judgment, have not been guilty of any unlawful act under section 2(1) of the Premiums on Leases Ordinance. In my view, the agreement dated the 17th February, 1966, was not unlawful when it was made. The agreement was not prohibited by law. Nor was it made for an unlawful purpose. In my opinion, it cannot be said that the agreement has become unlawful by reason of non-presentation forthwith to the City Council or the successors thereof. In the first place, the obligation to present the document arises only on the giving up of possession by the plaintiffs. In the second place, no statutory provision has been made for the function of receiving and inspecting the document to be exercised by anyone from the 1st September, 1963.

I come now to the second point of law. It is not disputed that the premises known as No. 1 Bishopsgate are subject to the Control of Rent Ordinance. It is not disputed that the defendants are the landlords of the premises and that the plaintiffs are the tenants. The question is whether the agreement of the 17th February, 1966, is unenforceable, the premises being subject to the provisions of the Control of Rent Ordinance. Section 4 of the Ordinance provides:—

> "No person shall as a condition of the grant, renewal, transfer or continuance of a tenancy require the payment of any fine, premium or other like sum or the giving of any other valuable consideration in addition to the rent and any sum or other valuable consideration paid or given in contravention of the provisions of this section shall be recoverable by the person by whom it was made or given."

In my opinion in the present case the consideration required by the plaintiffs to be given by the defendants was not in addition to the rent. The consideration was required as a condition of the surrender of the tenancy to the landlords. The consideration was not required as a condition of the transfer of the tenancy. So in requiring the giving of the consideration as a condition of the surrender of the tenancy, the plaintiffs, in my view, did not contravene the provisions of section 4. Here I would refer to the case of *Rajenbach* v. *Mamon*,[2] which was cited by counsel for the plaintiffs. There the facts were these. The plaintiff was the tenant of a flat, of which the defendant was the landlord. The flat was subject to the Rent Restriction Acts. In May, 1954, an oral agreement was made between the plaintiff and the defendant that the plaintiff would vacate the flat at the end of 1954 and that in the event of his so doing and in consideration thereof the defendant would pay to the plaintiff the sum of £300. The plaintiff always intended to vacate the flat at the end of the year. But the defendant denied the existence of the agreement and sought to repudiate it. The plaintiff brought an action claiming a declaration that in the event of his delivering up vacant possession on or before January 1, 1955, he should be entitled to payment from the landlord of £300. It was held that the plaintiff was entitled to the declaration sought, as the agreement was not void on the ground of public policy, or of want of mutuality, or as an attempt to contract out of the Rent Acts.

Counsel for the defendants in the present case argued on the authority of *Barton* v. *Finchans*,[3] that the plaintiffs' promise to give up possession on the 7th March, 1966, was unenforceable by the defendants; that it could not be a valid consideration in law for the defendants' promise; that there was a clear lack of mutuality, and therefore no contract between the parties.

A similar argument was presented to the court by counsel for the defendants in *Rajenbach* v. *Mamon* [2] and was rejected by Wynn-Parry J. who said:—

> "Ordinarily in a contract there would be mutuality, but many examples (if necessary) can be given where Parliament has stepped in and, to some extent, robbed a contract of some degree of mutuality without destroying it, and I think that this is one of those contracts".

I accept the view of Wynn-Parry J. and reject the argument presented by counsel for the defendants in the present case. I can find no reason for holding that the agreement of the 17th February, 1966, is in any degree vitiated by the effect of the Control of Rent Ordinance. I hold that the agreement is enforceable notwithstanding the provisions of that ordinance.

In my opinion, the decision of the two points of law disposes of the grounds of defence. I therefore give judgment for the plaintiffs against the defendants for the sum of $60,000 and interest thereon at the rate of eight per cent

per annum from the date of the writ to the date of payment and costs.

Judgment for the plaintiffs.

Solicitors: *Drew & Napier; Donaldson & Burkinshaw.*

MAHINDER SINGH v. BEH YOK NAM

[F.C. (Azmi C.J. (Malaya), Pike C.J. (Borneo) and Yong J.) March 2, 1967]

[Penang — Federal Court Civil Appeal No. X.41 of 1966]

Moneylenders — Borrower acknowledging receipt of true copy of promissory note — Acknowledgement endorsed at the back of original — Subsequent denial by borrower — Whether borrower estopped — Whether there was sufficient compliance — Moneylenders Ordinance, 1951, s. 16(1).

This was an appeal against the dismissal of the High Court of an action by a moneylender for principal and interest on a promissory note. The defendant denied an allegation by the plaintiff that he delivered an authenticated copy of the promissory note to the defendant before the money was advanced.

At the trial an advocate and solicitor gave evidence to the effect that the promissory note was prepared in duplicate, that both copies were signed by the lender and the borrower and that the note was attested by him, the attestation clause appearing on both copies. He further deposed that the borrower acknowledged receipt of copy on the reverse side of the original note.

The plaintiff gave evidence that before the defendant was given the copy he had compared it with the original and satisfied himself that they were the same. The defendant admitted having executed the promissory note and having acknowledged receipt of the copy but said that he in fact never received the copy.

The trial judge decided to hear as a preliminary issue the question whether there had been delivered to the defendant before the money was lent a copy of the promissory note authenticated by the lender and held that there was no evidence from which he could infer that the copy which was alleged to have been delivered to the defendant had been authenticated in the manner required by section 16(1) of the Moneylenders Ordinance, 1951.

Held: (1) as the borrower had signed a receipt for a true copy of the promissory note, which he had duly executed, he was estopped from denying that a true copy of the note was given to him;

(2) what the borrower was given in this case was not a mere copy of the promissory note authenticated by the lender but a duplicate original of the promissory note which was something more than what section 16(1) of the Moneylenders Ordinance required.

Cases referred to:—

(1) *Subramanian* v. *Konar* [1962] M.L.J. 385, 386.

(2) *Kartar Singh* v. *Mahinder Singh* [1959] M.L.J. 248.

(3) *Ang Khye Pang* v. *Chop Ban Aik* [1939] M.L.J. 282.

FEDERAL COURT.

A. Jeyadeva for the appellant.

Goh Eng Kee for the respondent.

In the court below the following judgment was delivered by,

Ong Hock Sim J.: This is an action by the plaintiff, a licensed moneylender, to recover upon an on demand promissiry note executed by the defendant in his favour on the 31st May, 1958 in respect of a loan of $2,000 with interest at the rate of 18 per centum per annum. Paragraph 5 of the statement of claim recited that "an authenticated copy of the said promissory note was delivered to the defendant before the money was advanced to him." This the defendant specifically denied in paragraph 3 of his statement of defence and I decided that this should be tried as a preliminary issue, namely whether there had been compliance with the provisions of subsection (1) of section 16 of the Moneylenders Ordinance 1951.

The solicitor who attested the promissory note testified that the defendant was given a copy of Exhibit P.1., the promissory note which had been signed by the parties thereto. He further stated that the defendant acknowledged the receipt of a copy thereof (which had been similarly executed by the parties) by signing below the words "Received a true copy of this note or memorandum" which had been typed out on the reverse side of the promissory note. The plaintiff did not add much further to this bit of evidence as, when put to him that there was no authenticated copy, he said "I gave you after comparing the copy with the original and satisfying myself they were the same". The defendant not only maintained that he did not receive an authenticated copy but went so far as to say that he did not even receive a duplicate of P.1. It is not material at this stage to draw any conclusion as to the credibility of the defendant. What I have at this stage to decide is whether an authenticated copy of P.1 had been given to the defendant. Counsel for the plaintiff urged that since defendant had not produced his copy to show it had not been authenticated as claimed by him, then I should presume against him. In support he referred to the case of *Subramaniam* v. *Konar* [1] where Thomson C.J. accepted evidence that the copy which was handed to the borrower was authenticated by reason of an admission "I also acknowledge that before receiving the said sum and before giving this promissory note to the lender a copy thereof . . . authenticated by the lender was delivered and received by me." This was reinforced by the evidence of the moneylender that he had signed twice on the pink copy, while signing only once on the white copy, and pointed to that being some form of authentication.

There is no dispute that the burden of proving that an authenticated copy of the note was handed lay upon the moneylender. Whether or not I believe the defendant that he did not receive even a duplicate copy, I have now to decide whether an authenticated copy of P.1 was so delivered by the plaintiff to the defendant.